

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

**UNITED STATES OF AMERICA,** )

**Plaintiff** )

**v.** )

**WAINWRIGHT INDUSTRIES, INC.** )

**Defendant.** )

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**Civil Action No. 4:02CV1548SNL**

**CONSENT DECREE**

**I. BACKGROUND**

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Valley Park TCE Site in Valley Park, Missouri ("the Site").

B. Settling Defendant denies that it has any liability for contamination at Operable Unit 2 at the Site. Settling Defendant admits its liability to Plaintiff for costs incurred and to be incurred by EPA with respect to soil and groundwater contamination at the Wainwright Operable Unit at the Site. This admission does not impact the scope of the Covenant Not to Sue by Plaintiff provided in Section IX.

C. The United States has reviewed the Financial Information submitted by Settling Defendant to determine whether Settling Defendant is financially able to pay response costs incurred and to be incurred at the Site. Based upon this Financial Information, the United States has determined that Settling Defendant is unable to pay more than the amounts specified in Section VI.

D. On May 16, 1996, Settling Defendant and the State of Missouri filed a consent decree in the Circuit Court of St. Louis County, Missouri, in which Settling Defendant agreed, among other things, to perform at the Wainwright Operable Unit the remedial action that was set forth in the

statement of work attached to that consent decree.

E. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

g. "Financial Information" shall mean those financial documents identified in Appendix B.

h. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

i. "Operable Unit 2" shall mean the soil and groundwater contamination at the Site not located on the Wainwright Operable Unit.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean the United States and the Settling Defendant.

l. "Plaintiff" shall mean the United States.

m. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

n. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

o. "Settling Defendant" shall mean Wainwright Industries, Inc.

p. "Site" shall mean the Valley Park TCE Site. The area comprising the Site is defined as the extent of chlorinated solvent contamination found in the aquifer under eastern Valley Park and southwestern Kirkwood. A map of the Site is attached to this Consent Decree as Appendix A.

q. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

r. "Wainwright Operable Unit" shall mean the source of soil and groundwater contamination in an area within and adjacent to the property formerly owned by Settling Defendant at 224 Benton Ave., Valley Park, Missouri. The area comprising the Wainwright Operable Unit is bordered on the north by Vest Avenue, on the east by 3d Street, on the South by Benton Avenue, and on the west by commercial properties.

s. "WOU Oversight Costs" shall mean costs incurred by the United States providing technical and legal assistance to the State of Missouri in connection with remedial work performed by any party at the Wainwright Operable Unit.

## **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendant to make a cash payment to address its liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section XI, and subject to the Reservations of Rights by United States in Section X.

## **VI. PAYMENT OF RESPONSE COSTS**

5. Payment for Past Response Costs. Settling Defendant shall pay to the EPA Hazardous Substance Superfund the principal sum of \$542,000, plus an additional sum for Interest as explained below. Payment shall be made in two installments. No interest shall be due on the first installment. The second installment shall include the principal amount due plus an additional sum for accrued Interest on the declining principal balance calculated from the date of entry of this Consent Decree. The first payment, of \$400,000, shall be due within 30 days of entry of this Consent Decree. The second payment, of \$142,000 plus Interest, shall be due on January 31, 2005. Settling Defendant may accelerate the second payment, and Interest due on the accelerated payment shall be reduced accordingly.

6. Payment for WOU Oversight Costs. In addition to the payments under Paragraph 5, Settling Defendant shall reimburse the EPA Hazardous Substance Superfund for WOU Oversight Costs incurred by EPA, from the date this Consent Decree is entered. Settling Defendant must pay the requested amount within thirty days of receipt of the written request for payment.

7. Settling Defendant may contest payment of any WOU Oversight Costs if it determines that the United States has made an accounting error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the United States pursuant to Section XV (Notices and Submissions). Any such objection shall specifically identify the contested WOU Oversight Costs and the basis for objection. If the objection pertains to only a portion of the WOU Oversight Costs due, Settling Defendant shall within the 30 day period pay the uncontested WOU Oversight Costs to the United States in the manner described in Paragraph 8. Simultaneously, Settling Defendant shall

establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Missouri and remit to that escrow account funds equivalent to the amount of the contested WOU Oversight Costs. Settling Defendant shall send to the United States, as provided in Section XV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested WOU Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendant shall initiate the Dispute Resolution procedures in Section VIII (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, Settling Defendant shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 8. If Settling Defendant prevails concerning any aspect of the contested costs, Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 8; Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section VIII (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendant's obligation to reimburse the United States for its WOU Oversight Costs.

8. Method of Payment. Payments shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number \_\_\_\_\_, the EPA Region and Site Spill ID Number 077F, and DOJ Case Number 90-11-3-07637. Payments shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Missouri following lodging of this Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

9. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions).

10. The entire amount of each payment to be paid pursuant to Paragraphs 5 and 6 shall be deposited in the Valley Park TCE Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

## **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

11. Interest on Late Payments. If Settling Defendant fails to make the payment under Paragraph 5 by the required due date, the remaining installment payment and all accrued Interest shall become due immediately upon such failure. If Settling Defendant fails to make payment under Paragraph 6 by the due date, Interest shall begin to accrue. Interest shall continue to accrue on any unpaid amounts until the total amount due has been received.

12. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$1,000 per day that such payment is late.

b. If any amounts due under Paragraph 6 are not paid by the required date, Settling Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 11, \$250 per day that such payment is late.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 077F, and DOJ Case Number 90-11-3-07637, and shall be sent to:

EPA Superfund  
USEPA Region VII  
Attn: Superfund  
P.O. Box 371099M  
Pittsburgh, PA 15251

d. At the time of each payment, Settling Defendant shall send notice that payment has been made to EPA and DOJ in accordance with Section XV (Notices and Submissions).

e. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. Penalties shall continue to accrue as provided in this Paragraph during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an

interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA [and the State] or to Settling Defendants to the extent that they prevail.

14. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand by EPA.

15. If the United States brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

17. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

### **VIII. DISPUTE RESOLUTION**

18. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendant that have not been disputed in accordance with this Section.

19. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute. Both Parties shall make reasonable efforts to informally resolve disputes at the Project Manager/Coordinator or immediate-supervisor level.

20. Statements of Position.

a. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Settling Defendant invokes the

formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendant. The Statement of Position shall specify Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 21 or Paragraph 22.

b. Within 21 days after receipt of Settling Defendant's Statement of Position, EPA will serve on Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 21 or 22. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendant as to whether dispute resolution should proceed under Paragraph 21 or 22, the Parties shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 21 and 22.

21. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendant regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the Parties.

b. The Director of the Waste Management Division, EPA Region VII, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 21.a. This decision shall be binding upon Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraph 21.c and d.

c. Any administrative decision made by EPA pursuant to Paragraph 21.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on the United States within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendant's motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendant shall have the burden of demonstrating that the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision



shall be on the administrative record compiled pursuant to Paragraph 21.a.

22. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendant's Statement of Position submitted pursuant to Paragraph 20, the Director of the Waste Management Division, EPA Region VII, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on Settling Defendant unless, within 10 days of receipt of the decision, Settling Defendant files with the Court and serves on the United States a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendant's motion.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

23. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendant under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 13. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 12 (Stipulated Penalties).

#### **IX. COVENANT NOT TO SUE BY PLAINTIFF**

24. Except as specifically provided in Section X (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) with regard to the Site. With respect to present and future liability, this covenant shall take effect upon receipt by EPA of the first payment required by Section VI, Paragraph 5 (Reimbursement of Response Costs). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of its obligations under this Consent Decree, including but not limited to, payment of all amounts due under Section VI (Payment of Response Costs), and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Defendant, including but not limited to Settling Defendant's representation that it is unaware of any insurance agreement under which any person carrying on an insurance business might be liable to satisfy part or all of a judgment in this action or to indemnify or reimburse Defendant for payments made to satisfy a judgment. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, Settling Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue and the

contribution protection in Paragraph 31 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Settling Defendant's false or materially inaccurate information. This covenant not to sue is also conditioned upon Settling Defendant's satisfactory completion of the work Settling Defendant is required to perform under its 1996 consent decree with the State of Missouri. Satisfactory completion occurs when the Missouri Department of Natural Resources approves Settling Defendant's certification of completion of work pursuant to Section XXIII of the 1996 consent decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

#### **X. RESERVATION OF RIGHTS BY UNITED STATES**

25. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 24. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendant with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. *liability, based upon Settling Defendant's ownership or operation of the Site, or upon Settling Defendant's transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Settling Defendant; and*
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

26. Notwithstanding any other provision of this Consent Decree, EPA reserves, and this Consent Decree is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Consent Decree, if the Financial Information provided by Settling Defendant, or the financial certification made by Settling Defendant in Paragraph 40(b), is false or in any material respect inaccurate.

27. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendant to reimburse the United States for additional costs of response if, after this Consent Decree is lodged, conditions at the

Site previously unknown to EPA and MDNR are discovered, or information about the Site previously unknown to EPA and MDNR is received, and these previously unknown conditions or information cause the United States to incur additional costs of response. For purposes of this Paragraph, "previously unknown" means unknown as of the date this Consent Decree is lodged.

#### **XI. COVENANT NOT TO SUE BY SETTling DEFENDANT**

28. Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 30 (Waiver of Claims) and Paragraph 34 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 25(c)-(e), but only to the extent that Settling Defendant's claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

29. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

30. Settling Defendant agrees not to assert any CERCLA claims or causes of action that it may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

#### **XII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

31. Except as provided in Paragraph 30, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The

preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 30, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

32. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendant is entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant coming within the scope of such reservations.

33. Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, Settling Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

34. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section IX.

### **XIII. ACCESS TO INFORMATION**

35. Settling Defendant shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, logs, receipts, reports, correspondence, or other documents or information related to the Site.

36. Confidential Business Information and Privileged Documents.

a. Settling Defendant may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendant that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendant.

b. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege in lieu of providing records, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this settlement shall be withheld on the grounds that they are privileged.

37. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

#### **XIV. RETENTION OF RECORDS**

38. Until five years after the entry of this Consent Decree, Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

39. After the conclusion of the document retention period in the preceding Paragraph, Settling Defendant shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendant shall deliver any such records to EPA. Settling Defendant may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant asserts such a privilege, it shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

40. Settling Defendant hereby certifies that, to the best of its knowledge and belief, after thorough inquiry, it has:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information regarding the Site and Settling Defendant's financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927; and

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Defendant executes this Consent Decree.

## **XV. NOTICES AND SUBMISSIONS**

41. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendant, respectively.

### **As to the United States:**

### **As to DOJ:**

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-07637)  
P.O. Box 7611  
Washington, D.C. 20044-7611

### **As to EPA:**

Denise Roberts  
Regional Attorney  
US EPA Region 7  
901 North Fifth Street  
Kansas City, KS 66101

Steve Auchterlonie  
Remedial Project Manager  
US EPA Region 7

901 North Fifth Street  
Kansas City, KS 66101

As to Settling Defendant:

John F. Cowling  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
Counsel for Defendant Wainwright Industries, Inc.

**XVI. RETENTION OF JURISDICTION**

42. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

**XVII. INTEGRATION/APPENDICES**

43. This Consent Decree and its appendices constitute the final, complete and exclusive Consent Decree and understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the map generally depicting the Site;

Appendix B” is a list of the financial documents submitted to the United States by Settling Defendant in connection with the Site;

**XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

44. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding this Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

45. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of this Consent Decree may not be used as evidence in any litigation between the Parties.

### **XIX. SIGNATORIES/SERVICE**

46. Each undersigned representative of Settling Defendant to this Consent Decree and the Deputy Section Chief of Environmental Enforcement Section of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

47. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of this Consent Decree.

48. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. Settling Defendant hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

### **XX. FINAL JUDGMENT**

49. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
United States District Judge



THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Wainwright Industries, Inc., Civil Action No. 4:02CV1548SNL, relating to the Valley Park TCE Superfund Site.

FOR THE UNITED STATES OF AMERICA:

THOMAS L. SANSONETTI  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

11/12/04  
Date

CATHERINE R. MCCABE  
Deputy Section Chief  
Environmental Enforcement Section

11/12/04  
Date

PAUL STOKSTAD  
DAWN GOLDSMITH  
Trial Attorneys  
United States Department of Justice  
Environment and Natural Resources Division  
Environmental Enforcement Section  
Benjamin Franklin Station  
Post Office Box 7611  
Washington, D.C. 20044-7611

California Bar No. 194305  
Counsel for Plaintiff United States of America

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Wainwright Industries, Inc., Civil Action No. 4:02CV1548SNL, relating to the Valley Park TCE Superfund Site.

Date: 11/5/04

\_\_\_\_\_  
Cecilia Tapia, Director  
Superfund Division, Region VII  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

Date: 11/4/04

\_\_\_\_\_  
Denise L. Roberts  
Senior Assistant Regional Counsel, Region VII  
U.S. Environmental Protection Agency  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Wainwright Industries, Inc., Civil Action No. 4:02CV1548SNL, relating to the Valley Park TCE Superfund Site.

FOR DEFENDANT WAINWRIGHT INDUSTRIES, INC.:

Date: 10/19/04

Arthur D. Wainwright  
[Names and addresses of Defendant's signatories]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

ARTHUR D. WAINWRIGHT  
NELSON WAINWRIGHT  
WAINWRIGHT IND., INC.  
17 CERNAX BLVD.  
ST. PETERS, MO. 63376

Name: NELSON WAINWRIGHT

Title: PRESIDENT

Address: WAINWRIGHT IND., INC.  
17 CERNAX BLVD.  
ST. PETERS, MO. 63376

## Appendix A: Map of Site

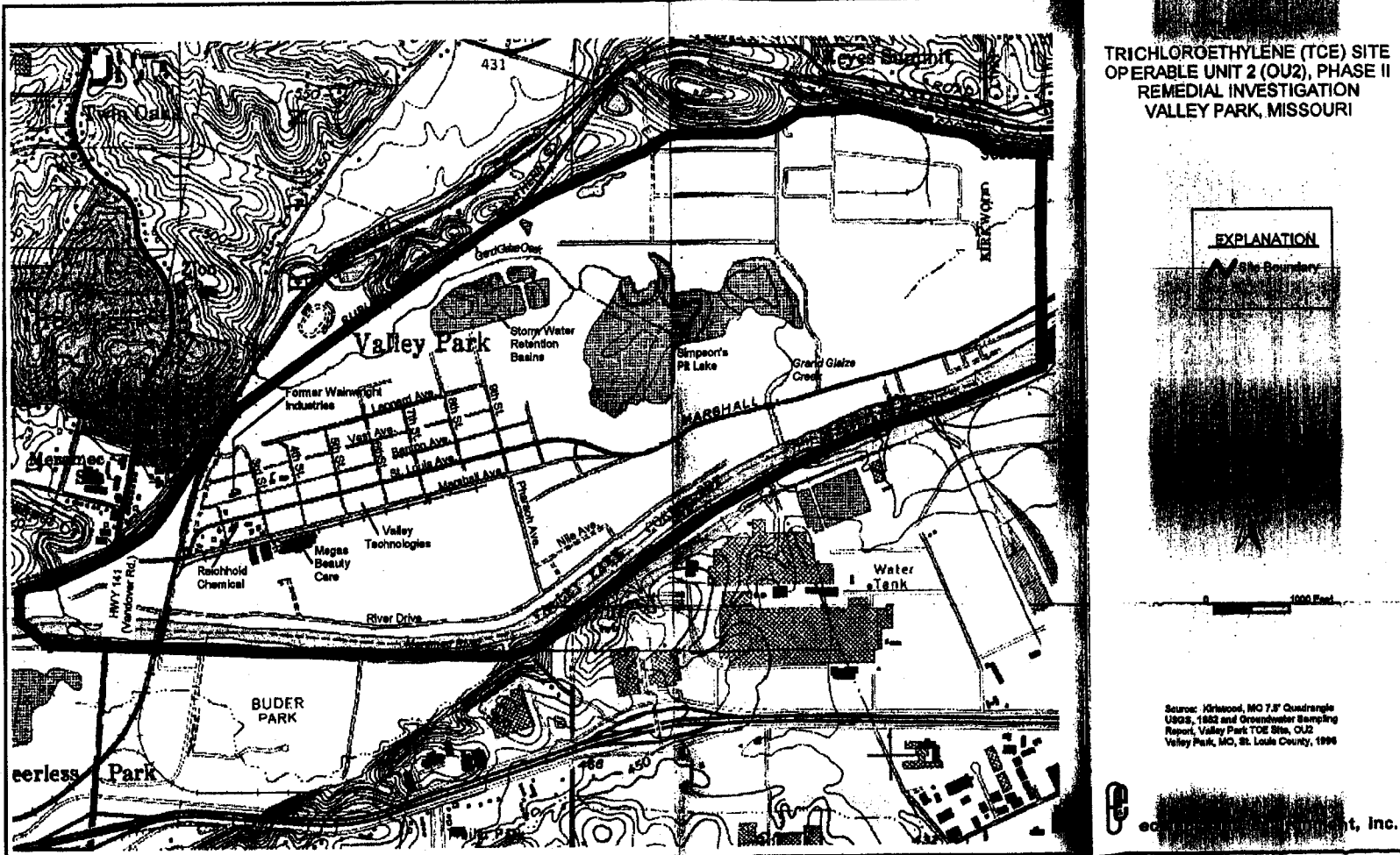


Figure 1-1: Site Location Map

## **Appendix B: List of Financial Documents**



**WAINWRIGHT  
INDUSTRIES, INC.**

17 Cermak Blvd., P.O. Box 640  
St. Peters, Missouri 63376  
636-278-5850 Fax: 636-278-8806  
[www.wainwrightindustries.com](http://www.wainwrightindustries.com)

**MEMO**

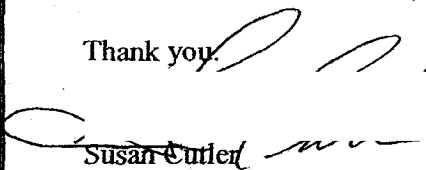
Date: June 2, 2004  
To: Paul Gromley, US Department of Justice  
From: Susan Cutler/Controller  
Subject: **Request for Documents**

Enclosed please find the following documents:

- A. U.S. Department of Justice Questionnaire.
- B. Financial Statements for Wainwright Industries, Inc. for FY 00, FY 01, FY 02, FY 03 & interim as of April 30, 2004.
- C. Tax Returns for Wainwright Industries, Inc. for 1999, 2000, 2001 & 2002.
- D. Financial Statements for Meyer Wainwright, LLC (subsidiary) for FY 03, FY 02 & interim as of April 30, 2004.
- E. Tax Returns for Meyer Wainwright, LLC (subsidiary) for 2002 & 2001.

Please call if I can be of any assistance. (636)-278-5850, ext. 3016.

Thank you.

  
Susan Cutler  
Controller



*CONTINUOUS COMMITMENT TO OUR CUSTOMERS' FUTURE*